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**To:** [Scoping\\_Delta\\_Plan@Delta Council](mailto:Scoping_Delta_Plan@Delta_Council)  
**Subject:** CEQA scoping comments on the development of the Delta Plan  
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Ms. Terry Macaulay  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
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via email

Subject: CEQA scoping comments on the development of the Delta Plan

Four comments:

(1) The geographic scope of the EIR should be expanded from Suisun Marsh downstream into the entirety of San Pablo Bay, Central Bay, and South Bay as a secondary planning area. This is needed if the Delta Plan is to include any facilities that could improve or increase the ability to export water from the Delta and affect the timing or quantity of water flowing to the bays.

Further explanation:

Water projects (any private or public diversion, storage and/or hydropower project) have operational criteria wherein the operator makes often discretionary decisions about diverting to storage, releasing to instream flow, and diverting water to out-of-stream uses. Often times these overall operations are permitted and conditions, restrictions or requirements to protect other beneficial uses are imposed. The basis of these discretionary decisions (those discretions not impaired by permit conditions) is risk factors (e.g., risk to maximizing water supply, risk to adverse impacts to aquatic ecosystems, risk to hydropower benefits, etc.). The regulatory conditions placed on "projects" always leave some control over assigning risk by the project operators, and when such discretion is allowed, invariably the project operator's beneficial use (agricultural supply, M&I supply, flood control, hydropower benefits, etc.) will be given priority over public interests benefits such as ecosystem maintenance or fisheries.

Storage project operators have reason to replenish conservation storage as soon as physically possible. Thus, without regulatory constraints, these operators divert to storage all they can of the very first runoff events, and continue until some point when they have to slow or stop diversion to storage only due to flood control constraints or the conservation pool is full. The impacts of such an operation is to deny downstream aquatic ecosystems the natural and much needed inflow conditions until some time much later in the runoff season.

Drought conditions in the Central Valley have provided great case histories of these operations, risks and secondary impacts. The 1976-1977 and the 1987-1992 droughts, particularly the 5 years of water transfers from Yuba County Water Agency totaling 1.15 MAF, provide excellent examples. The more recent droughts have given different case histories because of other requirements imposed (e.g., Endangered Species Acts).

The unintended and unaddressed riverine and estuarine impacts would largely be due to changes in upstream reservoir conservation storage, lower storage leading into the fall/winter period, more capture of early runoff into storage, and much later rainy season high flows into the estuary as would be in the baseline condition. Much is not known of the public trust resource flow-related needs in the Bay-part of this estuary. Additional studies are needed. The Delta Plan EIR should acknowledge that there is likelihood for secondary ecosystem impacts downstream of Suisun Marsh that should be addressed and ultimately the unintended effects avoided and/or mitigated.

(2) The EIR should evaluate and display at least two extreme alternatives if optimizing both co-equal objectives - to provide a more reliable water supply and protecting restoring and enhancing the Delta ecosystem – is not possible. One alternative should be maximizing water supply and another alternative must be maximizing Delta ecosystem protection, restoration and enhancement. Only through such a display will any other alternative have meaning to decision makers and almost all publics.

(3) Quantification of resources levels with and without the proposed action in the EIR is essential - flows, water supplies to be delivered, population levels of aquatic resources, water quality conditions, etc.

(4) In EIR assessments it will be erroneous to assume that meeting an adopted water quality standard implies no environmental impact.

Further explanation:

Flow standards for lotic aquatic ecosystems are often not absolute, but rather a condition set (minimums) against a baseline operation, and thus the minimum or the standard was only intended to be in effect under operations for which it was set. We have flow standards for the Delta. No flow standards for the protection of public trust resources downstream of the Delta have been set. The assumptions of regulators in the past have been that the large-scale flow events the Bays need are not going to be attenuated by water development. As water projects have advanced in numbers and the demands for diversion increased, the Delta has become a place where dry season inflows conditions have been quite predictable and frequent even in the wetter winter and spring periods. The condition of the Delta being "in balance" - that is the inflow and exports are controlled such that the Delta outflows are just what is required to meet a water quality control plan objective - has become a more common occurrence in all 4 seasons. For perspective, in the 1976/1977 drought the Delta was in balance for over 365 consecutive days - a truly remarkable event and proof of our ability to greatly modify the hydrology of a huge watershed. As the valley-wide surface water supply has been more effectively used for out-of-stream uses, regulatory standards for the Delta increased, and conflicts over water for various beneficial uses intensified, the times and duration that the minimum flows have been in effect has increased substantially. The State Water Resources Control Board's 2010 report on public trust flow need underscores this.

Even in the absence of new storage facilities, the ability of projects - private and public, surface and ground water, water marketing, etc. - to coordinate operations for mutual water supply benefit can result in much more control of the watershed's water to the detriment of aquatic ecosystems. This EIR needs to acknowledge that reality.

Submitted

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